

No. 05-534 OCT 25 2005

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In The
Supreme Court of the United States

THOMAS J. EUTENEUER
and ANNE C. LOTIERZO,

Petitioners,

vs.

SCOTT LAPOLLA, JILL CIELO
and COLLEEN CARR,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether the Freedom of Access to Clinic Entrances Act of 1994, 18 U.S.C. § 248, operates only to protect people after they are inside a facility?

PARTIES TO THE PROCEEDING

Petitioners are Thomas J. Euteneuer and Anne C. Lotierzo.

Respondents are Scott Lapolla, Jill Cielo and Colleen Carr.

In addition to these parties, the following were parties to the proceedings below:

Arnold Guerrero
Carlito Arrogante

RULE 29.6 STATEMENT

None of the parties are corporations.

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PETITION FOR WRIT OF CERTIORARI

Petitioners Thomas J. Euteneuer and Anne C. Lotierzo respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit was not published but is reproduced at Appendix App. 1.

The decision of the United States District Court for the Southern District of Florida was not published but is reproduced at Appendix App. 4.

JURISDICTION

The United States Court of Appeals for the Eleventh Circuit issued its opinion on July 28, 2005. (App. 1.) The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISION

The Freedom of Access to Clinic Entrances Act of 1994, 18 U.S.C. § 248, provides in relevant part as follows:

(a) Prohibited Activities. – Whoever –

(1) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure,

intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services; . . . shall be subject to the penalties provided in subsection (b) and the civil remedies provided in subsection (c), except that a parent or legal guardian of a minor shall not be subject to any penalties or civil remedies under this section for such activities insofar as they are directed exclusively at that minor.

* * *

(e) Definitions. – As used in this section:

(1) Facility. – The term “facility” includes a hospital, clinic, physician’s office, or other facility that provides reproductive health services, and includes the building or structure in which the facility is located.

(2) Interfere with. – The term “interfere with” means to restrict a person’s freedom of movement.

(3) Intimidate. – The term “intimidate” means to place a person in reasonable apprehension of bodily harm to him- or herself or to another.

(4) Physical obstruction. – The term “physical obstruction” means rendering impassable ingress to or egress from a facility that provides reproductive health services or to or from a place of religious worship, or rendering passage to or from such a facility

or place of religious worship unreasonably difficult or hazardous.

(5) Reproductive health services. - The term "reproductive health services" means reproductive health services provided in a hospital, clinic, physician's office, or other facility, and includes medical, surgical, counselling or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy.

STATEMENT OF THE CASE

This petition seeks review of a decision of the United States Court of Appeals for the Eleventh Circuit upholding a decision of the United States District Court for the Southern District of Florida with respect to the application of the Freedom of Access to Clinic Entrances Act of 1994, 18 U.S.C. § 248 ("FACE Act").

Petitioners believe that the decision of the Court of Appeals conflicts with the decisions of other Courts of Appeals. The effect of this conflict creates uncertainty in the consistent application of the FACE Act throughout the country.

This case arose when Petitioners filed a Verified Complaint requesting declaratory and injunctive relief to enjoin Respondents from committing future violations of the FACE Act and future acts of assault and battery. Petitioners brought this action because Respondents obstructed, interfered with, and intimidated Petitioners or attempted to obstruct, interfere with, and intimidate

Petitioners' ability to provide reproductive health services and referral counseling. Based upon Respondents' past assaults and threats, Petitioners have reason to believe that Respondents would likely commit violations of the FACE Act and acts of assault and battery in the future.

Petitioners hold sincere beliefs which dictate that human life from conception to death is to be protected. Petitioners' faith compels them to communicate their beliefs to others. One manner in which Petitioners share their message of life is to offer information related to the nature of abortion, abortion alternatives, and post-abortion healing, symptoms, and assistance. Petitioners peacefully explain their beliefs to those seeking to have or perform abortions, those persons escorting others to have abortions, and the general public. Petitioners are certified reproductive health service referral counselors and have been formally trained on how to perform their duties as reproductive health service referral counselors. Petitioners are also certified "Project Rachel" Post-Abortion Counselors.

Petitioners offer reproductive health services in Fort Pierce, Florida, and the surrounding communities as an extension of their work inside reproductive health services facilities. Since 1999, Petitioners have been volunteers and on the Board of Directors for the Pregnancy Care Center of Fort Pierce, 1119 Delaware Avenue, Fort Pierce, Florida ("PCC"), offering counseling to men and women on abortion and alternatives. The PCC of Fort Pierce is a reproductive health services and referral facility. Petitioners counsel men and women on the nature of abortion and abortion alternatives within the Pregnancy Care Center facility.

Since 1993, Petitioner Euteneuer has served on the Board of Directors and as a volunteer for the Mobile Pregnancy Unit of Port St. Lucie, Florida, a traveling recreational vehicle which offers reproductive health services and referrals to men and women, including alternatives to abortion. In July of 1999, the Mobile Pregnancy Unit of Port St. Lucie, Florida, began doing business as the Pregnancy Care Center ("PCC") located in Fort Pierce, Florida. The traveling recreational vehicle also continues to operate and offer reproductive health services counseling in the Okeechobee, Florida, area. Petitioner Euteneuer also provides reproductive health services and refers women seeking reproductive health services and their escorts to the Mobile Pregnancy Unit.

Since 1996, Petitioner Euteneuer has been the Chairman of the Board and a volunteer for Lifeline of Martin County located at 933 Lincoln Avenue in Stuart, Florida. The Lifeline facility offers reproductive health services, including abortion alternatives. Petitioner Euteneuer offers reproductive health services and referral counseling to men and women at Lifeline.

The reproductive health services and referral counseling that Petitioners offer at facilities such as the Mobile Pregnancy Unit, the PCC, and at Lifeline extends into the Fort Pierce and surrounding communities, often including the sidewalks near the PCC.

Petitioners' reproductive health services referral counseling includes the distribution of literature with information directing women and their escorts to abortion alternative facilities such as Lifeline, the PCC, the Vero Beach Crisis Pregnancy Center, and the Crisis Pregnancy Center of Port St. Lucie.

On September 4, 2003, Defendant Scott LaPolla shouted at Petitioner Euteneuer "You better not talk to my girlfriend. When she comes out of the car - I'm telling you - don't talk to her. Look, I'm telling you - I am a convicted felon on house arrest. Don't fucking mess with me. Leave her alone or I'll fuck you up." Defendant LaPolla then ran toward Petitioner Euteneuer yelling in a threatening manner "I'll fuck you up dog."

Since 1997, Petitioner Lotierzo has been a volunteer with the Mobile Pregnancy Unit, offering reproductive health services referral counseling to men and women. Beginning in 1999, Petitioner Lotierzo began serving as a member of the Board of Directors for the Mobile Pregnancy Unit and a volunteer and on the Board of Directors with the PCC. Petitioner Lotierzo offers reproductive health services referral counseling to men and women at these facilities.

The reproductive health services referral counseling that Petitioner Lotierzo offers at the PCC and the Mobile Pregnancy Unit extends into the Fort Pierce and surrounding communities. The reproductive health services referral counseling of Petitioner Lotierzo includes the distribution of literature with information directing women and their escorts to abortion alternative facilities such as information for Lifeline, the PCC, the Crisis Pregnancy Center, and the Vero Beach Crisis Pregnancy Center.

On February 19, 2000, Petitioner Lotierzo was offering reproductive health services referral counseling. Petitioner Lotierzo then offered reproductive health service referral information to the woman exiting a car. The driver of the car, referred to as a Defendant Jane Doe

I, then aimed her car directly at Petitioner Lotierzo and drove the vehicle toward Petitioner Lotierzo. Petitioner Lotierzo was forced to jump out of the way of the vehicle to avoid being hit.

On June 17, 2000, Petitioner Lotierzo was offering reproductive health service referral counseling. Defendant Colleen Carr began screaming, "You pervert," "Get out of here," "You're sick." Defendant Carr then said, "I am going to run you down with my car." Petitioner Lotierzo then turned on her video camera to film the rest of the incident. Defendant Carr then paused in her car and screamed, "Bitch, you better get it off of me or I'll fucking rip it off of you."

The United States District Court for the Southern District of Florida dismissed Petitioners' Verified Complaint based upon the conclusion that Petitioners failed to state a cause of action under the FACE Act. The District Court accepted that Petitioners' Verified Complaint did "sufficiently allege elements one, two, and three, but they have not alleged the fourth: that defendants' actions were taken because plaintiffs have provided, are providing or will provide, reproductive health services." (App. 9.) However, Petitioners' Verified Complaint alleges:

18. Plaintiffs offer reproductive health services in Fort Pierce, Florida, and the surrounding communities *at and within the Pregnancy Care Center* of Fort Pierce, 1119 Delaware Avenue, Fort Pierce, Florida, facility, as a part of their reproductive health services *provided in the Pregnancy Care Center* of Fort Pierce facility.
19. The Freedom of Access to Clinic Entrances Act of 1994, Title 28 U.S.C. § 248, prohibits